

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT**

**Decree-Law no 2/2008
NATIONAL PETROLEUM AUTHORITY**

Under Timor-Leste's Constitution the State is entitled to all natural resources that are vital to the economy that exist in the soil and subsoil of Timor-Leste, including petroleum. These resources are to be efficiently managed for the benefit of the people of Timor-Leste as a whole.

In order to manage and supervise the exploration, development and production of these resources, Timor-Leste has enacted the Petroleum Activities Law for the areas under Timor-Leste's exclusive jurisdiction, and the Petroleum Mining Code in the Joint Petroleum Development Area.

Considering that the petroleum resources owned by Timor-Leste are a strategic component of its economy, and have potentially a high economic value that if managed properly will generate significant revenues and direct benefits to the economy of the country.

Noting the importance of regulating this sector prudently and supervising its the activities in such a way that all petroleum exploration, development and production contribute to maximise the overall benefit to the country and its people while adopting measures aimed at protecting the environment.

The Government hereby creates the National Petroleum Authority (NPA) in order to establish and supervise compliance with the enacted rules and regulations covering the exploration, development, production, transportation and distribution of petroleum and natural gas resources.

Once it is fully operational, the NPA will be able to ensure the petroleum and gas security of the country by managing the country's minimum strategic fuel stock requirements and will also be able to ensure minimum quality standards for petroleum products available in the domestic market and minimum standards of compliance with consumers security.

The Government accordingly decrees the following, in accordance with paragraph "e" of no. 1 and no. 3 of article 115° of the Constitution of the Democratic Republic of Timor-Leste:

CHAPTER I. GENERAL PROVISIONS

Article 1. Nature

1. The National Petroleum Authority is a public institute vested with administrative and financial autonomy, a budget and property rights of its own, that abides by the regulatory

framework regulating the financial administration of autonomous self-financed institutions, the object of which is to act as the regulatory authority for the petroleum and gas and related products industry, in accordance with the provisions of the Petroleum Activities Law, Petroleum Mining Code and Timor Sea Treaty, and this Decree-Law.

2. The regulatory powers of the NPA are restricted to the regulated sector and to setting technical and operational standards and administrative requirements or to regulating non-compliance with such standards and requirements, in accordance with enacted legislation.

3. In matters relating to the Joint Petroleum Development Area (JPDA), this Decree Law shall be interpreted and applied consistently with the Timor Sea Treaty, the Sunrise International Unitization Agreement (IUA) and the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS).

Article 2. Supervision and Control

1. Without prejudice to its administrative and financial autonomy, the NPA shall operate under the supervision of the member of the Government responsible for oil-related matters, and the following shall be submitted for his/her approval:

- a) The annual activities plan and budget;
- b) The activities report and the budgetary implementation report.

2. The member of the Government under whose supervision NPA operates may request at any time that the institution be subject to external audits.

CHAPTER II. POWERS AND FUNCTIONS

Article 3. Powers and Functions

1. The NPA shall be responsible for the regulation, contracting, supervision and control of the economic activities related to petroleum and of the petroleum operations in the upstream sector, in line with the policies defined by the Government for the sector, in particular:

2. Non-financial management functions:

a) to undertake surveys and research with a view to promoting interest in the exploration and exploitation of any available blocks or areas offered for bidding in the areas under the exclusive jurisdiction of Timor-Leste, or in the Joint Petroleum Development Area (JPDA), pursuant to the provisions of the Timor Sea Treaty;

b) to prepare calls for tender, manage tenders and award petroleum contracts as well as supervise the technical and economic performance of operators in the areas under exclusive jurisdiction of Timor-Leste while observing principles of transparency, fair competition, quality and economic value (cost-based), without prejudice to the inclusion

of weighting and correcting criteria that will take into account the competitive limitations of national production factors;

c) to access, consolidate and disseminate on an annual basis all the information pertaining to national petroleum reserves whose submission will be mandatory on operators; and to disseminate such information, including providing access to non-confidential data to the general public.

3. Financial management functions:

a) to ensure that procedures and methods for the measurement/quantification of oil production are rigorous for the purposes of determining the royalties that are due for contracts awarded, and the share in the profits to be paid to the State, as well as the tax to be imposed;

b) to receive royalties and the share in the profits that is due to the State, as provided for in Shared Exploitation Contracts or in any other petroleum contracts;

c) to monitor and approve the costs recovery plans provided for in Shared Exploitation Contracts or in any other petroleum contracts.

4. In the downstream sector, NPA shall promote the efficient and optimal use of installed capacity in petroleum infrastructures such as pipelines, terminals, transport and communications infrastructures, encouraging the shared use of equipment and giving access to and enabling the use of existing access capacity. The NPA shall also ensure national energy security and monitor and regulate all petroleum activities so as to guarantee satisfactory supply and quality levels of petroleum products to consumers.

5. It shall also be incumbent upon NPA:

a) to identify and establish the limits of areas required for the exploitation, development and production of petroleum, and to coordinate the necessary administrative procedures for the expropriation of such areas in the area under exclusive jurisdiction of Timor-Leste, pursuant to the law;

b) to ensure that the best practices regarding conservation and the rational and sustained use of petroleum and its derivatives are adopted, in accordance with the legal requirements for the protection and preservation of the environment that are in force;

c) to stimulate research, introduction and use/application of new technologies in all petroleum operations;

d) to compile, organise and manage the technical data relating to the petroleum sector/industry.

6. In all modalities of petroleum activities, the NPA shall determine and implement regulations and administrative decisions requiring specified levels of national contribution to the petroleum sector, as well as maximal use by the petroleum industry of the national installed capacity in goods and services.

7. The NPA shall ensure compliance with public health standards and environmental legislation and/or subsidiary regulations in all petroleum operations, as well as good environmental practices by minimising discharges and emissions.

8. In matters relating exclusively to the Joint Petroleum Development Area (JPDA) established by the Timor Sea Treaty, the NPA, as Designated Authority, shall be answerable to the Joint Commission and shall exercise the regulatory powers that were conferred upon it as manager/administrator of petroleum operations.

9. The powers and functions of the NPA, in its capacity as Designated Authority for the purpose of the Treaty, shall include:

(a) day-to-day management and overall regulation of petroleum activities in accordance with the Timor Sea Treaty and any instruments adopted or ratified under the Treaty;

(b) the preparation of the annual estimates of income and expenditure of the NPA that are strictly related to activities and operations in, or connected to the Joint Petroleum Development Area (JPDA) for submission to the Joint Commission;

(c) the preparation of annual reports to be submitted to the Joint Commission;

(d) requesting the assistance of the appropriate Australian and Timorese authorities in the joint exploration area, consistent with the Timor Sea Treaty

i. for search and rescue operations in the JPDA;

ii. in the event of a terrorist threat to the ships and structures involved in the petroleum operations in the JPDA; and

iii. for air traffic services in the JPDA;

(e) requesting the assistance of the appropriate Australian and Timorese authorities, or other bodies or persons, in connection with anti-pollution preventive measures, including the requisition of equipment and support or the activation of emergency procedures;

(f) establishing of safety zones and restricted access zones, consistent with international law, in order to ensure the safety of navigation and petroleum operations;

(g) controlling movements into within and out of the JPDA of vessels, aircraft and structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law;

(h) subject to the customs, quarantine (public health) and migration (aliens and borders) provisions of the Timor Sea Treaty, authorise access to the JPDA by employees of contractors and by their subcontractors, and other persons;

(i) issuing regulations, directives or instructions to operators, in accordance with the Timor Sea Treaty, on all matters related to the supervision and control of petroleum activities, including on public health, labour, safety of persons and property, environmental protection and assessment and best practices, pursuant to the Petroleum Mining Code applicable to the JPDA;

(j) exercising such other powers and functions as may be identified in Annexes to the Timor Sea Treaty.

Article 4. Powers and Prerogatives of the Administrative Authority (*jus imperi*)

1. The NPA shall be vested and exercise State powers and prerogatives in order to comply with its regulatory and supervisory functions, which are limited to:

a) the supervision of facilities, equipment and documents of entities operating in the petroleum, natural gas and derivatives industry/regulated sector;

b) the collection of the tariffs (public prices) and services charges due as a consequence of its regulatory and supervisory activity;

c) within the limits of the Constitution and general law, and exclusively in what concerns the regulated sector, the coercive enforcement of its administrative decisions by requesting the intervention of other administrative or police authorities if necessary;

d) the imposition of administrative sanctions to operators, or the direct execution of penalties provided for in contracts whenever a breach of normative or contractual obligations occurs including, but not restricted to, immediate termination of all exploitation-related activities or, with regards to the exploration and exploitation equipment, their sealing for a fixed period.

2. The NPA shall issue, in the exercise of its regulatory powers, regulations which establish the administrative procedures and obligations to be complied with by entities in the petroleum and natural gas industry and its derivatives, operating in the regulated sector.

3. The NPA shall apply the principle of due process in enforcement proceedings and in so doing shall ensure that offenders are entitled to make representations in their own defence. Throughout the administrative proceedings, the offenders in breach of any

applicable legislation or provisions included in a contract shall be entitled to make representations in person or in writing in their own defence as operators.

Article 5. Arbitration and Resolution of Disputes

The regulations to be approved by the NPA shall make provisions regarding the administrative procedures to be adopted in order to hear the parties in arbitration procedures or to resolve disputes between the parties involved, with an emphasis on conciliation and arbitration.

CHAPTER III. STRUCTURE OF THE NPA

Article 6. Organs

1. The NPA shall have the following organs:

- a) Board of Directors;
- b) President of the NPA (Chairperson of the Board of Directors);
- c) Single Auditor.

Article 7. Board of Directors

1. The Board of Directors is the collective organ in the organisation responsible for defining the general direction of the organisation in accordance with sector-related policies issued by the Government of Timor-Leste; approving technical regulations and directives; approving the NPA's consolidated work plan and budget.

2. The Board of Directors shall consolidate with NPA's overall budget the budget dedicated to activities developed within and in association with the JPDA, once said budget has been duly approved by the Joint Commission.

3. Without prejudice to the provisions in paragraph 7.2 above, any delay in the international approval of said component of the consolidated budget shall not represent an impediment to the national/internal procedure of approval of NPA's overall budget without its JPDA component.

4. The budget allocations referred to in paragraph 7.3 above shall be consolidated with the overall budget of the NPA once approved by the Joint Commission.

5. The Board of Directors shall be comprised of its Chairperson (the President of the NPA) and four other directors.

6. The President of the NPA and two other directors will sit on this Board following their designation by the Government and the other two will be *ex officio* members of the Board because of positions held as NPA's executive directors responsible for the upstream and downstream divisions.

7. The Government-designated members shall be nominated and appointed by the member of the Government in charge of petroleum resources for a renewable 4-year term of office, upon approval of their designation by the Council of Ministers.

8. The two *ex officio* members of the board will shall be appointed for a renewable 3-year term. However, should the duration of their employment contract as executive directors for the upstream and downstream divisions/departments be less than 3 years, they shall have their term of office set according with the duration of their employment contract.

9. The members of the Board of Directors shall not have any financial interests or holdings in undertakings in the regulated sector while they are in office and for the period of 1 (one) year after they cease to be board members.

10. Any board member might be dismissed under the following circumstances:

a) adjudication of judicial decision;

b) in the case of Government appointees, on the grounds of serious failure to fulfil their functional duties, gross negligence or a negative evaluation of his/her performance by the appointing body ;

c) in the case of executive directors for the upstream and downstream divisions/departments, on the grounds of non-renewal or forced termination of contract (dismissal).

Article 8. Powers and Functions of the Board of Directors

1. The Board of Directors shall:

a) define the mission and general orientation and direction of the NPA, within the limits of the public nature of the institution;

b) approve strategic and business plans and ensure compliance therewith;

c) approve the internal regulations of the NPA and any other external regulations necessary for the Authority's supervisory and regulatory activity notwithstanding number 9, paragraph i) of article 3;

d) approve for submission to the member of the Government supervising the NPA its annual work plan and budget, pursuant to number 2, paragraph a) of article 2;

e) commission an annual external audit of the institution, or pursuant to number 2 of article 2.

Article 9. Proceedings of the Board of Directors

1. The Board of Directors shall meet ordinarily once a month and extraordinarily whenever convened by its Chairperson or at the request of its other members or the Single Auditor.
2. Whenever consensus is unattainable the Board of Directors shall deliberate by using the simple majority rule and the Chairperson will have the power to exercise his/her casting vote.

Article 10. President of the NPA/Chairperson of the Board of Directors

1. The President of the NPA is the executive organ of the NPA in charge of day-today management and administration of the organisation.
2. The President of NPA shall be the chairperson of the Board of Directors *ex officio*.
3. The President of the NPA will be assisted by executive directors to help him/her in carrying out his/her duties.
- 4 The President of the NPA shall establish a Management Committee which will consist of all executive directors.
5. The position of President of the NPA is entrusted by the Government, who appoints him/her. The President's contractual obligations are then regulated under a contract of mandate. In his/her capacity as a public manager, the President of the NPA, can have his/her mandate revoked by the Government at any time.
- 6 For the purpose of the paragraph 10.4 above, the Government can only revoke the mandate on grounds of serious failure to fulfil his/her obligations, gross negligence or a negative evaluation of his/her management performance.

Article 11. Powers and Functions of the President of the NPA/Chairperson of the Board of Directors

The President of the NPA/Chairperson of the Board of Directors shall:

- a) represent the NPA in court or other legal proceedings;
- b) after seeking the non-binding views of the Joint Commission, appoint an executive director with exclusive responsibility for JPDA matters;

c) after competitive procurement of positions of Director, appoint the executive Directors of the NPA, notwithstanding the transitional one-year provisions under article 31 of this Decree-Law;

d) head and supervise the day-to-day operations of the NPA, including the approval of any instructions;

e) chair all meetings of the Board of Directors and Management Committee and ensure proper implementation of all deliberations and decisions;

f) coordinate the activities of the Board and the Executive Directors, including allocation of responsibilities to its members, and ensure hierarchical compliance with decisions taken;

Article 12. Single Auditor

The Single Auditor is the organ responsible for monitoring legality, regularity and proper financial and patrimonial management of the NPA.

Article 13. Appointment and Term of Office

The Single Auditor shall be appointed by a joint order of the Secretary of State for Natural Resources and the Minister of Finance for a renewable 3 (three)-year term of office, and can only be removed from office on grounds of serious failure to fulfil his/her obligations or gross negligence.

Article 14. Functions of the Single Auditor

1. The Single Auditor shall:

a) as the organ responsible for financial control, audit the economic, financial and patrimonial management of the NPA;

b) periodically inspect the books and accounting records of the NPA;

c) issue recommendations prior to the acquisition and disposal of immovable assets;

d) produce a technical opinion on NPA's budget and a report on budgetary execution including technical recommendations to be submitted to the Board of Directors;

e) issue recommendations on internal procedures for control;

f) inform the member of the Government supervising NPA and the Minister of Finance about any irregularities detected in the course of his/her activities.

2. The functions of the Single Auditor are without prejudice to the appointment of external auditors under the Timor Sea Treaty exclusively for the purposes of that treaty.

CHAPTER IV. CONDITIONS OF EMPLOYMENT, ASSETS AND FINANCE

Article 15. Employment of Staff

1. The NPA's staff, other than statutory appointed Board members and auditor, are subjected to competitive procurement in their recruitment process in accordance with the principles of transparency, fair competition and best practices in the sector.
2. Without prejudice of the provisions in paragraph 15.1 above, the contractual conditions shall be agreed by the parties within the limits of the labour law and the administrative and financial autonomy of the NPA, notwithstanding the transitional one-year provisions under article 31 of this Decree-Law.
3. Contracts of employment shall be primarily governed and interpreted by the rules of the contract and complemented by the Timor-Leste labour law.
4. The current employees of the Designated Authority may be recruited into NPA upon cessation of the TSDA. Their recruitment shall be subject to a new contract and agreement between the NPA and each individual employee of the former TSDA on the terms and conditions of their employment.
5. Without prejudice to the provisions in paragraph 15.3 above, the NPA shall not be the TSDA's successor as employer.

Article 16. Assets

1. The official and initial patrimony of the NPA shall comprise the property and assets and all of the technical data of the preceding authority (TSDA), as well as other transfers by State institutions and agencies, particularly the Secretariat of State for Natural Resources, once the transfer procedure has been duly completed.
2. Parties to the Timor Sea Treaty shall have access to the technical data on JPDA referred to in paragraph 16.2.

Article 17. Revenues

The following are NPA's own revenue:

- a) the sums in respect to the service charges payable for the provision of services within the scope of its powers and functions;
- b) the sums with regard to authorisations, certificates, approvals and other licences

granted in the exercise of NPA's powers;

c) the proceeds of fines imposed for breaches of the laws, regulations, technical requirements applicable to the regulated sector or contractual obligations;

d) budgetary allocations by the Government;

e) grants, inheritances or legacies;

f) income and proceeds from its own assets, the disposal thereof or from the establishment of rights over such assets;

g) any other income arising from its activity, or which belongs to it by law, internal regulation or contract.

Article 18. Expenditures

1. The NPA's expenditures shall be all expenditure which the Board of Directors internally approves as necessary for the performance of its functions and the exercise of its powers, the operation of its services, and the management of its assets.

2. All charges paid by contractors in relation to the JPDA shall be expended in accordance with the budget for the JPDA, approved by the Joint Commission.

CHAPTER V. EXPLOITATION AND PRODUCTION OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES

Article 19. Legal Entitlement to Rights

1. Timor Leste's petroleum and natural gas exploitation, development and production rights in the areas under exclusive jurisdiction of Timor-Leste shall be administered by the NPA.

2. The petroleum and natural gas exploitation, development and production rights in the JPDA are shared between Timor-Leste and Australia pursuant to the Timor Sea Treaty and shall be administered by the NPA in accordance with the provisions in the Treaty, the Sunrise International Unitization Agreement (IUA) and the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS).

Article 20. Nature of the Technical Assets

The technical assets, which comprise data and information regarding the sedimentary basins of Timor-Leste, are also considered to be an integral part of the national petroleum resources and shall be collected, maintained and administered by the NPA.

Article 21. Petroleum Contracts/Agreements

The NPA will enter into Contracts/Agreements for the exploitation, development and production of petroleum and natural gas in areas under exclusive jurisdiction of Timor-Leste in accordance with the Petroleum Activities Law and its subsidiary regulations, and in JPDA areas in accordance with the Petroleum Mining Code .

CHAPTER VI. REFINING OF PETROLEUM AND PROCESSING OF NATURAL GAS

Article 22. Submission of Bids

1. Any undertaking or consortium, which complies with the legal requirements and regulations may submit bids to the NPA for the construction and operation of petroleum refineries, or of its products, natural gas processing and stocking units, as well as for expanding the capacity thereof.
2. The NPA shall establish technical, commercial and socio-economic requirements, such as the level of local employment creation and of purchase/use of local goods and services, that shall be mandatory for bidders; and project requirements in terms of environmental quality and protection, industrial safety and the safety of the public at large.
3. The provisions of the preceding number having been complied with, the NPA shall grant an authorisation.
4. Authorisations may be transferred to third parties with prior express approval of the NPA, provided that the new holder of the authorisation complies with the requirements given.

CHAPTER VII. TRANSPORT OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES

Article 23. Transport Authorisations

1. Provided that the provisions of the relevant laws are complied with, any undertakings or consortium of undertakings, which comply with the legal requirements and regulations may be granted permission by the NPA to construct facilities/infrastructures or to effect any form of transport of petroleum, petroleum products or natural gas, whether for domestic supply or import-export.
2. The NPA shall approve rules regarding qualification and approval of interested parties and conditions for the granting of authorisation and for the transfer thereof, in accordance with environmental protection and traffic safety requirements.

Article 24. Use of Pipelines

1. The NPA shall promote an optimal and efficient use of the oil infrastructure, in particular pipelines, terminals and communications infrastructures, encouraging the sharing of such facilities whenever possible, with a view to allowing all operators to access and use unused or available capacity as a matter of priority.
2. The NPA shall agree with owners the tariffs to be charged for the use of such infrastructures in the areas under exclusive jurisdiction of Timor-Leste and may permit any interested party to use the excess capacity of pipelines and sea terminals in exchange for the payment of an appropriate rent/sum to the owner of the facilities.
3. In the event that there is no agreement between the parties, the NPA shall fix the appropriate amount and payment method and shall confirm that the referred amount is compatible with the market.

CHAPTER VIII. IMPORT/EXPORT AND MARKETING OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES

Article 25. Granting of Authorisations

The NPA may grant to any undertakings or consortium of undertakings, which comply with the legal requirements and regulations, an authorisation to import, export and market petroleum or its derivative products and/or natural gas.

CHAPTER IX. FINAL PROVISIONS

Article 26. Transfer of Powers and Functions

1. Powers and functions of a regulatory nature, and rights and obligations related to petroleum and gas and related products industry, which were originally granted by law or contract, directly or in representation, to the Ministry in charge of the petroleum sector as the public contracting party, shall be vested in the NPA, including but not limited to, Articles 9 to 14, except paragraph b and c of article 13, 18 to 21, 23 and 24, 27 to 32 and 38 of the Petroleum Activities Law;
2. All powers, functions, rights and obligations of the preceding Designated Authority (TSDA) pursuant to the Timor Sea Treaty shall be vested in the NPA as from July, 1, 2008.
3. The assets and technical data of the TSDA shall become the assets and technical data of the NPA as from and including July 1, 2008
4. Pursuant to the Timor Sea Treaty and the subsequent agreements between the Governments of Timor-Leste and Australia on the postponement of the TSDA cessation, the TSDA will cease to exist as from and including July, 1, 2008.

Article 27. Legislative Changes

Proposed new legislation or amendments to existing legislation which affect the rights of economic agents or of consumers and users of goods and services of the petroleum industry shall be preceded by a public hearing convened and conducted by the NPA.

Article 28. Transposition of JPDA Regulations and Official Gazette

1. Upon approval by the Joint Commission, the international regulations that have a bearing on the activities undertaken in the JPDA shall be transposed to Timor-Leste's legal system by means of decree-laws, so as to become mandatory for national administrative authorities, including NPA, and be enforced by them.
2. The international regulations that have a bearing on the JPDA and were approved before June 30, 2008 shall be considered in force in that international area . It shall be the responsibility of NPA, as Designated Authority, to act in conformity with these regulations during the execution of any activities in that area or any related activities.
3. All external regulations issued by the National Petroleum Authority (NPA) within the scope of its regulatory powers under the present Decree-Law shall be published in the official gazette.

Article 29. Transition of Regimes

Undertakings which are lawfully engaged in any of the activities described in articles 23 and 25 of this Decree-Law, shall register anew with the newly established institution, the NPA, within 120 days after its entry into force.

Article 30. Preservation of Acquired Rights

The provisions of this Decree-Law shall not affect third party rights that were acquired prior to its entry into force pursuant to contracts entered into with the preceding Designated Authority (TSDA) in accordance with the laws in force, and shall not annul the acts of the member of Government supervising petroleum- related matters.

Article 31. NPA's Staffing Table

1. The initial staff of the NPA for a transitional period of 1 year shall consist of former TSDA staff under new or revised contractual conditions upon the cessation of this organisation, and other staff from the Secretariat of State for Natural Resources seconded by the Secretary of State under the public service mobility regime after careful consideration of their technical and professional skills for the new jobs.
2. Except for the aforementioned initial 1-year period which will be required for the internal implementation of the necessary administrative regulations, competitive recruitment procedures will be used at all times when employing staff to work in the

NPA. In particular, such procedures shall abide by the principles of transparency, fair competition, non-discrimination, quality and economic value (cost-based).

Article 32 Entry into force

This Decree-Law shall come into force on the day following its publication in the Official Gazette, without prejudice to the provisions referred to in article 26, paragraph 2, 3 and 4 of this Decree-Law which will come into effect as from July, 1.

Approved by the Council of Ministers, on the 18 June 2008.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emilia Pires

Promulgated on 19/6/08,

To be published.

The President of the Democratic Republic of Timor-Leste,

Jose Ramos Horta